

Serial No. 10/824,254
24 February 2005 Reply to
24 August 2004 Office Action

REMARKS

Claims 1-4, 7-14, and 17-23 are pending in the present application. Claims 1-23 stand rejected under 35 U.S.C. 102(b), and claims 20-21 stand rejected under obviousness-type double patenting. Claim 5, 6, 15, and 16 have been cancelled. Claims 1 and 12 have been amended.

Applicants respectfully request reconsideration and allowance of the above-identified application in view of the above amendments and the following remarks.

35 U.S.C. 102(b); Abreu, Claims 1-23:

Applicants respectfully traverse this rejection. Abreu does not teach each and every element of the claimed invention.

In regard to claims 1-11, Abreu does not teach, among other things, a method of determining an analyte concentration in a tissue of a subject, the subject including an eye with an ocular surface and a conjunctiva surface, where the method includes the steps of detecting mid-infrared radiation emitted from the conjunctiva without contact with the ocular surface using a non-invasive instrument comprising a mid-infrared emission detector; and, determining a radiation signature of the mid-infrared radiation, to determine an analyte concentration in a tissue of the subject. In contrast, Abreu teaches "contacting" the eye. As indicated in the Abstract, Abreu involves a "contact device laying on the cornea or the surface of the eye."

In regard to claims 12-23, Abreu does not teach, among other things, a method of determining an analyte concentration in a tissue of a subject, the subject including an eye with an ocular surface and a conjunctiva surface, where the method includes the steps of detecting naturally occurring mid-infrared radiation emitted from the conjunctiva without contact with the ocular surface using a non-invasive instrument comprising a mid-infrared detector; comparing a radiation signature of the mid-infrared radiation to a radiation signature of mid-infrared radiation corresponding to an analyte concentration; and analyzing the radiation signature of the mid-infrared radiation from the subject to determine the analyte concentration in a tissue of the subject. Again, Abreu teaches "contacting" the eye.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

Serial No. 10/824,254
24 February 2005 Reply to
24 August 2004 Office Action

Obviousness-type Double Patenting:

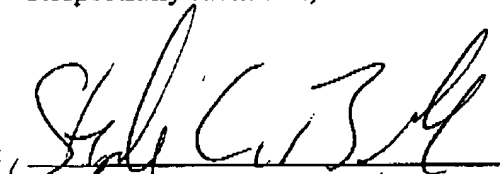
In regard to these rejections, a terminal disclaimer is enclosed.

CONCLUSION

On the basis of the above amendments and remarks, reconsideration and allowance of the application is believed to be warranted and such action is respectfully requested. The Examiner is respectfully urged to contact the undersigned if he has any questions or issues with respect to the above amendment.

Respectfully submitted,

Dated: 2/24/05

By: 
Stephen O. Beuerle
Reg. No. 38,380

Procopio, Cory, Hargreaves & Savitch LLP
530 B Street, Suite 2100
San Diego, CA 92101-4469
Tel: (619) 238-1900